

THE MARTHA'S VINEYARD COMMISSION

BOX 1447, OAK BLUFFS, MASSACHUSETTS, 02557, 508-693-3453, FAX 508-693-7894 INFO@MVCOMMISSION.ORG

Minutes of the Regular Meeting of December 18, 2003

Held in the Olde Stone Building,
33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: John Best (Elected – Tisbury), Christina Brown (Elected – Edgartown), Linda DeWitt (Appointed – Edgartown), Jane A. Greene (Appointed – Chilmark), Katherine Newman (Appointed – Aquinnah), Doug Sederholm (Elected – Chilmark), Robert Schwartz, (Appointed – West Tisbury), Linda Sibley, (Elected – West Tisbury), Paul Strauss (Appointed – County), Richard Toole (Elected – Oak Bluffs), Roger Wey (Appointed – Oak Bluffs), Andrew Woodruff (Elected – West Tisbury)

Staff: Mark London (Executive Director), Jennifer Rand (DRI Coordinator), Bill Veno (Senior Planner), Bill Wilcox (Water Resources Planner), Jo-Ann Taylor (DCPC Coordinator), Chris Seidel (GIS Specialist)

1. REVISIONS TO THE STANDARDS AND CRITERIA – PUBLIC HEARING

Commissioners present: J. Best, C. Brown, L. DeWitt, J. Greene, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, R. Wey, A. Woodruff.

There being a quorum present, Christina Brown, Hearing Officer called the public hearing to order at 7:30 P.M. and read the Public Hearing Notice.

1.1 Presentation by LUPC Chairman

Christina Brown explained that the purpose of the hearing was to receive comment on the proposed revisions to the Standards and Criteria. She summarized the proposed changes, namely adding definitions for the terms “lot” and “parcel” and making four types of existing referral “with the concurrence of the Commission”. She explained that there is little change proposed at this time, but that there will be a more thorough review in the near future, with input from the public and town boards, possibly resulting in proposals for more extensive alterations.

1.2 Public Testimony

There was no oral testimony.

Christina Brown read letters from the Tisbury Board of Health, suggesting that definitions and standards should be more precise, and from the West Tisbury Planning Board, in favor of the proposal to make more referrals “by concurrence”.

Christina Brown closed the public hearing, and Vice-Chairman Linda Sibley assumed the chair.

2. REVISIONS TO THE STANDARDS AND CRITERIA – DELIBERATIONS AND DECISION

Commissioners present: J. Best, C. Brown, L. DeWitt, J. Greene, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, R. Wey, A. Woodruff.

Richard Toole moved, and it was duly seconded, that the proposed revisions to the Standards and Criteria be adopted as presented. Roll call vote. In favor: J. Best, C. Brown, L. DeWitt, J. Greene, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, R. Wey, A. Woodruff. Opposed: 0. Abstentions: 0. The motion carried.

Kartherine Newman arrived to the meeting.

3. GRANTS AND DONATIONS

Jane A. Greene, Clerk-Treasurer, read the list of 2003 grants and donations: \$227,500 from MassHighway, \$180,000 from Mass. Executive Office of Environmental, \$35,124 from DEP, for dedicated purposes. Also, the following unrestricted donations were received: \$500 from QLS Atlantic Center for the Environment, \$500 from Laura Chasen, \$111 from Mark London, \$50 from June Kapell, \$50 from Mike Ravitch and \$30 from Doris Antun. She noted that further details are available for examination by anyone.

Jane A. Greene moved, and it was duly seconded, to accept these grants and donations. Voice vote. In favor: 12. Opposed: 0. Abstentions: 0.

4. LUPC SITE VISITS

- Monday, January 5 at 8 am, site visit B.A.D.D. Company, Edgartown
- Monday, January 12 at 8 am, site visit Coleman Subdivision, Chilmark (to be confirmed)

5. ELECTION OF OFFICERS FOR THE COMING YEAR

Commissioners present: J. Best, C. Brown, L. DeWitt, J. Greene, K. Newman, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, R. Wey, A. Woodruff.

John Best, head of the Nominating Committee, repeated his report at the last Commission meeting to the effect that the Nominating Committee had proposed the following slate of officers for 2003: James Athearn for Chairman, Linda Sibley for Vice-Chairman and Jane A. Greene for Clerk-Treasurer. There were no other nominations proposed.

Doug Sederholm moved, and it was duly seconded, to elect the officers as proposed by the Nominating Committee. Voice vote. In favor: 12. Opposed: 0. Abstentions: 0. The motion carried.

6. SOUTHERN WOODLANDS CLEARING OF TREES AND ALTERATION OF USE – PUBLIC HEARING ON DISCRETIONARY REFERRAL (DRI 555-1)

Paul Strauss made the following statement on his and Roger Wey's behalf:

"Many members of the public approached the Oak Bluffs Board of the Selectmen and the County Commission regarding the cutting that was reported in the Southern Woodlands of Oak Bluffs, and we were asked ultimately what the Town, the County Commission and the Martha's Vineyard Commission could do about it. As it turns out, both the Board of Selectmen and the County Commission are authorized by Chapter 831 to submit a discretionary referral to the Martha's Vineyard Commission, even if the subject activity is not specifically mentioned in the DRI checklist. We were both at the County Commission meeting when that vote was taken, and we feel that we wish to avoid any possibility of an appearance of prejudgment on this determination [by the MVC], and have decided not to participate in tonight's discussion".

Roger Wey confirmed the statement made by Paul Strauss. He said that this was his last meeting as a Commissioner and he wished the remaining commissioners good luck and happy holidays.

Paul Strauss and Roger Wey left the meeting.

Commissioners present for the hearing: J. Best, C. Brown, L. DeWitt, J. Greene, K. Newman, R. Schwartz, D. Sederholm, L. Sibley, R. Toole, A. Woodruff.

Present for the Owner, Corey Kupersmith: Brian Lafferty, representative.

Christina Brown, Hearing Officer, called the public hearing to order and read the Public Hearing Notice.

John Best disclosed that his wife is a member of the Board of the Vineyard Conservation Society, which has testified in opposition to other proposals for this property, and said that the Ethics Commission has deemed it not to be a conflict.

Christina Brown said that this hearing is not on the merits of the proposal, whether the project is a "good" or "bad" thing, merely whether it is a Development of Regional Impact. According to section 14 of Chapter 831 of the Acts of 1977 as amended, "a proposed development which does not qualify as a Development of Regional Impact under the Standards and Criteria approved pursuant to section seven may nevertheless be referred to the Commission as a Development of Regional Impact by a municipal agency in the town where the development is located, by the Board of Selectmen in any other municipality in the County of Dukes County or by the County Commissioners".

6.1 Staff Report

Jennifer Rand read the letters of referral from the Board of Selectmen of the Town of Oak Bluffs and from the Dukes County Commissioners.

Mark London summarized what is presently known about the proposal.

- On November 11, in a letter to Tom French, the Assistant Director of the Commonwealth of Massachusetts Division of Fisheries and Wildlife Natural Heritage Program, Brian Lafferty stated that 20,000 board feet of lumber had already been cut and further cutting would be done soon for the personal use of the owner. It was the intention of the owner to convert the majority of the property to agricultural use.
- The November 20, 2003 letter of reply from Tom French to Brian Lafferty said that Natural Heritage considers that the entire property is a sensitive area and any alteration of the habitat is subject to review.
- In late November and early December, additional cutting took place in the area located next to the Featherstone Center. During a December 17, 2003 telephone conversation. Mike Nelson, of Natural Heritage, said that Brian Lafferty had indicated that this second phase of cutting involved clear-cutting six acres of trees.
- There have been reports in the newspapers to the effect that the owner's intention is to clear-cut most or all of the land and convert it to agricultural use.
- A site visit was planned by Natural Heritage for the day of the hearing.

Christina Brown asked Mr. Lafferty whether these reports were accurate.

Brian Lafferty asked to speak first regarding a procedural issue.

- He said that the Ethics Commission has ruled that both Mr. Best and Mr. Toole have a financial interest in the property under consideration, that Mr. Toole has specific instructions as to what his disclosures must be, that Mr. Best is aware of those disclosures, and that neither one has made the disclosures.
- He added that, in the course of discovery for one of the nine lawsuits filed against the Commission, some other things have come to light, and CK Associates will be filing in federal district court after the first of the year; CK Associates has irrefutable evidence that two members of the Commission sitting tonight, and one member who has already left, were involved in a conspiracy against Down Island Golf and Corey Kupersmith projects. He suggested that the two members who remained sitting should excuse themselves now and not participate.
- He added that the disclosures made tonight were not consistent with the Ethics Commission's opinion and Mr. Best and Mr. Toole should not sit, in which case, the would be no quorum.

John Best responded that he didn't submit an additional written disclosure, suggesting that Brian Lafferty may be referring to a written disclosure. He has not been advised by the Ethics Commission that another written disclosure would be needed.

Christina Brown said that the hearing will proceed and that Mr. Lafferty's concerns will be referred to the Commission's attorneys.

Christina Brown asked Mr. Lafferty to explain the proposal. **Brian Lafferty** said that he may offer to speak after hearing the comments from others. **Jane A. Greene** asked how the public could comment if he hasn't explained what the proposal is. She asked what kind of agriculture and tree cutting is planned. She added that, in order to determine whether it is a DRI, the project should be clarified. **Doug Sederholm** suggested that the Commission take public testimony, and then the Hearing Officer could take further public testimony after any comments by Brian Lafferty.

6.2 Testimony from Public Officials

Richard Combra, Chair of the Oak Bluffs Board of Selectman, said that the Selectmen had received many enquiries by citizens of the town concerned about the tree cutting. There was no formal vote but there were informal discussions. As chair, he asked the Town Administrator to refer it for the MVC's determination as to whether or not it is a DRI. He said that the Selectmen felt that the cutting of six acres was significant but did not want to infer that the Board of Selectmen had necessarily determined that this rose to the level of a DRI. The Selectmen have left this determination to the Commission. It was his understanding that there was no need for a formal vote and he was of the opinion that, as Chair, he could determine that referral could be made. He feels confident that, had a vote been taken, the board would have voted to make the referral. Speaking as an individual Selectman, he supports this referral. He felt an obligation as an elected official. He doesn't believe that the work that has been done so far rises to the level of a DRI. The owner's future intentions might rise to a level of a DRI. There have been other examples of cutting 6 acres on the Island that have not been referred to the MVC as a DRI. He does not think that cutting 6 acres of trees on someone's private property rises to the level of a DRI. In response to a question from **Andrew Woodruff**, he said that he has been advised by the building and Zoning Official that there have been no DCPC violations to date.

Mark London suggested that the primary issue that the Commissioners might want to consider is not the cutting that has already taken place but rather the publicly stated intention to clear cut the majority of the property and convert it from forested open space to another use, namely silviculture or agriculture. He asked DCPC Coordinator Jo-Ann Taylor to discuss the regional impacts, as determined in the Commission's DCPC designation.

Jo-Ann Taylor noted that one criterion for designation is that there must be a regional need for special regulations or planning to protect the district.

- She read from the Commission's 1998 Decision Designating the Southern Woodlands District as a District of Critical Planning Concern.

"Information available to the Commission supports a finding that the Southern Woodlands District is of regional importance...the Commission finds that so important are the values that these lands create and support, that to maintain and enhance the health, safety and general welfare of Island residents and visitors, and for present and future generations, special development controls within the District must be adopted...The Commission also finds after its review that present private and public regulations in the District cannot assure protection, and that damage to the Southern Woodlands District land and waters will be a substantial loss to the region or to two or more towns on the Island".
- The Commission designated the Southern Woodlands District with the goal:

"To permit the Town to evaluate the potential impacts of a proposed development for the purposes of creating a stewardship that makes careful use of the resources of the District in order to provide opportunities for appropriate development while maintaining water quality, prevention of pollution, promotion of habitat and maintaining and enhancing recreational and other uses of the District."
- In summary, she stated that the Commission determined that there were regional resources in need of special protection, and gave the town a goal and guidelines to develop appropriate controls, thus making the town the steward of those regional resources. The town subsequently adopted DCPC regulations for the district, including site plan review.
- She went on to discuss the regulations, noting that one of the criteria requiring a special permit is the clearing of an area greater than one third the lot size. Once the trigger for special permit review has been proposed, there are special site plan review standards that

must be met in order to be granted a special permit. One of those standards is that existing vegetation must remain within 100' of Barnes Road and County Road, and within 50' of other boundaries of the district.

Mark London noted that agriculture is an as-of-right use in the regulations. It can be determined that a proposal is a Development of Regional Impact whether or not it requires a town permit.

Mark London added that the staff has prepared examples of thresholds for review of tree cutting projects, in order to provide a basis for comparison for when various agencies consider that review is required. He summarized the findings.

- Natural Heritage: According to the November 20, 2003 letter from Tom French, Assistant Director of the Division of Fisheries and Wildlife of the Commonwealth of Massachusetts Natural Heritage and Endangered Species Program (Natural Heritage) to Brian Lafferty, Natural Heritage considers that the entire property is a sensitive area and any alteration of the habitat is subject to state review.
- Aquinnah: The 2000 zoning regulation required that any tree clearing of an area larger than ½ acre be subject to review in order to obtain a special permit. Since the creation of the town-wide DCPC, the 2001 regulations make the threshold for a special permit 200 square feet.
- Forest Cutting Practices Act: Chapter 132 of the Massachusetts General Laws, the Forest Cutting Practices Act, sets a threshold of 25,000 board feet or 50 cords for triggering review.
- It would appear that the first phase involved harvesting approximately 20,000 board feet of wood, equivalent to 40 cords, and that the additional cutting of six acres produced 20 cords per acre or approximately 120 cords (equivalent to 60,000 board feet). This would be greater than any of the thresholds mentioned.

Katherine Newman asked whether there was a site plan committee for the DCPC, as described in the regulations. **Richard Combra** said there is, but it is only called on to work when there is an application, so it is not presently active. **Katherine Newman** wondered whether the committee should make comment.

Linda Sibley asked whether, at the time of designation, there were many smaller lots, and that the significance of the 1/3 lot standard, based on the smaller lots, would be different in comparison with the present lot configuration. **Todd Rebello** said that he believes that there are now eight different lots owned by different entities. It is a concern that the 1/3 cutting could take place in each of the different lots. **Brian Lafferty** said that there were five or six different entities involved in the applications for the golf course and probably 12 for all the lands in the Southern Woodlands.

Richard Toole asked whether there was a requirement in the DCPC regulations for a buffer regarding the trees adjacent to the ancient ways. **Jo-Ann Taylor** responded that there is a site plan review standard requiring that existing vegetation is kept within 50' of the centerline of a special way. She reiterated that there are site plan review standards regarding buffers, and that they are different from the special permit criteria, such as the requirement for a special permit to clear more than 1/3 of a lot, as would form the basis for an enforcement action by the town. She would not speculate on what the site plan review standards mean, outside the context of a special permit application.

Todd Rebello, Oak Bluffs Selectman, said that he also would have referred the proposal to the Commission because there is no plan in place. He considers the cutting reckless because there is no plan in place. The concerns of the citizens of Oak Bluffs are real because there is an obvious tug of war between the developer and the Commission, which is costing hundreds of

thousands of dollars. One of the permitted uses is recreation and he speculates that the property owner might be landscaping his property with golf holes. There are other properties on the Island with private golf holes. There was a clear cutting of 30-40 acres on Middle Road with no referral to the Commission. He doesn't know what would trigger a DCPC violation or what else the developer might do. He suggested a need to get dialogue and have everyone put out his or her agendas on the table. Everyone feels that he is entitled to a profit and this developer does as well.

6.3 Public Testimony

Kerry Scott is a resident of Oak Bluffs. She wondered why the discussion was not focused on the checklist item "once a DRI, always a DRI".

David Grunden is president of the Lagoon Pond Association. This is in the Lagoon Pond watershed and what he is proposing to do could have detrimental impact on the pond. He was hoping to hear what the developer is planning. One could argue that cutting 6 acres would be insignificant on the pond but that cutting one-third of the property could be significant. Also, growing soybeans would have different impacts than growing livestock. The public can't make substantive comment until the proposal is known.

Renee Balter served on the DCPC committee and spent a year discussing this with town boards and the public. Most of Oak Bluff's 4500 acres of land is divided into small lots. The 270 acres of the Southern Woodlands represents only about 5% of the total land mass. Clear cutting would have a detrimental impact on the town as well as the Lagoon and Sengekontacket Ponds, and thus, other towns. Without a DRI, much more could happen.

Anne Gallagher is from Oak Bluffs and is on the Board of Featherstone. She asked whether the cutting along the property line with Featherstone was on the edge of the district and thus subject to preserving a 50' buffer. **Mark London** and **Jo-Ann Taylor** said that Featherstone is within the district boundaries, so that site plan review standards would not include requiring a buffer between the properties, but there is a site plan review standard requiring a 100' buffer from Barnes Road.

Kerry Scott said that what was already done was disturbing but not devastating. It should be a DRI to consider future uses. She expressed confidence in the MVC to deal with the situation, and did not feel confident relying on the town to oversee it. She added that this has regional impact, without question.

Ann Margetson said that during the hearings about the future of the Southern Woodlands, there was talk about nitrogen loading and the impact on the ponds. She has since heard that cutting the trees and leaving them there leads to a sudden release of nitrogen that goes into the ponds, thus creating potential regional impact.

Brian Lafferty said that if the representative of the Lagoon Pond Association was really concerned about Lagoon Pond, he should have testified in favor of the golf course.

- He thought it was disingenuous for Featherstone to have stripped the land on Featherstone property up to the property line, and then to complain about tree cutting on CKA property. He wondered if Featherstone got a special permit.
- The Forest Cutting Practices Act says that an owner can cut 50 cords per day, with no limit on cutting for the owner's personal use.
- Part of the strategy in doing the two cuts that have been done is that, a year ago, when there was a referendum vote for Oak Bluffs to leave the Commission, statements were made that the MVC could protect and save Oak Bluffs and the Southern Woodlands. He is

going to show that it isn't true, that there is not a damned thing that the Commission can do to save the Southern Woodlands that the Commission has absolutely no jurisdiction. He is about to show that the Commission has no teeth, no ability to do what has been proposed or claimed by the Commission's supporters.

- The other part of the strategy is that the Commission is currently involved in nine lawsuits, seven with CKA. He read in the Gazette that the Commission has budgeted \$70,000 for legal expenses and is \$90,000 in the hole. He believes that, according to the Commission's financial statements, the Commission is \$200,000 in debt and the current budget has been exhausted. Corey Kupersmith has budgeted \$1.5 million and he expects that the MVC will have to go dollar for dollar. He is dying to see what happens when the Commission goes to the towns and asks them to fund their \$1.5 million legal bills, that the Commission is not going to win.
- As for the long term prospective on what the current plan is for the Southern Woodlands, reminding the Commission that agricultural uses are exempt from zoning and from the Commission's perceived authority. When CKA is done with the Southern Woodlands, it will be returned to its 1938, post-Hurricane condition, when there was not a tree in the Southern Woodlands. A dilemma of development is that people want to return a property to what it used to be, but often can't decide what year that means. CKA has decided that 1938, post-Hurricane is a viable goal.
- CKA intends to place virtually the entire property into agricultural and recreational use, for Corey's own personal use. "It is Corey's property and he intends to use it."
- The agricultural uses will likely include farming as traditionally known, and some grazing of animals for various uses.
- The area next to Featherstone was cleared for two reasons, to send a message, and because that area that is likely to be used for raising livestock. That area will probably be expanded.
- Other areas are going to be used for Corey's personal recreational use. That will include a couple of different things. One use will be a long-range rifle range. It is one of the few areas that is isolated enough to be 500' from a residence, as required in Massachusetts. Corey will be using it for his own personal use.

Brian Lafferty said "The basic overall purpose, when all is said and done, and it is returned to its 1938 condition, is that a lot of the areas and things that the Commission ostensibly suggested were environmentally sensitive, and particularly sensitive to change and fragmentation, those concerns will be eliminated, and should another project be developed there sometime in the future, the standards that the Commission used to evaluate the previous projects will no longer exist".

Linda Dewitt said to Mr. Rebello that she believes that all parties working together, as he suggested, could produce a positive outcome. **Todd Rebello** responded that it must be a public forum. He added that he was at a loss for words, except to say that he was disgusted by what he heard, but still feels that a solution is possible. He feels that Oak Bluffs is caught in the middle of a power struggle between CKA and the Commission.

Andrew Woodruff suggested that the Oak Bluffs Board of Selectmen is the right body to take the initiative.

Todd Rebello disagreed, saying that it may have been true at one point, but that there is a bigger issue. A majority of townspeople voted to remain in the Commission, so there will be a role played by the Commission. There must be realistic dialogue, and some open space can be preserved.

Renee Balter said it is like your worst nightmare coming true, that nothing could be more of a regional impact than the proposal as just stated. Environmentally, viewing scenery, ancient trails, so many of the issues involved in the DCPC; this proposal is way over and above these regulations. She believes that the Commission, with its special legislation, can do what the town can't. She hopes that the Commission will find that the proposal is a DRI.

David Grunden said that his committee is made up of representatives of both Oak Bluffs and Tisbury. Clear-cutting the entire property would affect Lagoon Pond, not only the people of Oak Bluffs and Tisbury, but also visitors. The proposal should be reviewed to determine its potential impacts. It may be an allowable use for the property, but needs to be discussed. It is a major change in the use of the land that certainly affects more than the town of Oak Bluffs.

Todd Rebello cautioned the Commission that a determination that the proposal is a DRI might strengthen CKA's position, showing that the Commission has not acted consistently regarding cutting on other pieces of property.

Doug Sederholm asked Richard Combra, recalling his opinion that cutting 6 acres would not constitute a DRI, whether he now believed that removing all the trees would constitute a DRI. **Richard Combra** responded that he has heard only potential uses, that if Mr. Lafferty were to file a plan involving those uses, there would be reason to make a DRI designation.

Doug Sederholm understood Mr. Lafferty to say that since what Mr. Kupersmith is doing is for his personal recreational and agricultural use, he can do anything he wants and nobody can stop him; since he has made several applications in the past for certain developments that have been denied because of the impacts to resources and habitat, if he destroys the resources and habitat, then those concerns are removed and no one will be able to stop him from the development that he couldn't do when those resources and habitats existed; because it's his private property, he can destroy it, and then when he comes back and wants to develop it and finally gives the Commission a plan, the Commission won't be able to complain because there will be nothing to protect. He asked Richard Combra if he felt that it was accurate.

Richard Combra said that one could perceive it that way. He added that the term "destroy" is different for different people. He owned a piece of property on County Road and has a photo from the 20's from the front porch clear to Lagoon Pond and Vineyard Haven Harbor, with no trees. The pond is not as productive as it was when he was younger, so he doesn't see the relation between trees and productivity. The effort to remove all the trees would involve the DCPC regulations, and the Oak Bluffs Zoning Official would bring an action.

Linda Sibley responded to the suggestions that it might be inconsistent to designate this activity a DRI when other properties have been cut without permits. She noted that none of the other clearing projects was referred to the Commission.

Mark London referred to statement by the Selectmen that the cutting of six acres in itself is not a DRI, and it is only when faced with a plan that it could be considered a DRI. It is his understanding that the town zoning regulations have an agricultural exemption; that it is only the Martha's Vineyard Commission that does not have an agricultural exemption; that it is only through the Commission, through a DRI or through the DCPC regulations, that there is control over agricultural uses, but that the trigger for the town to look at is cutting more than 1/3 of a lot, so that 89.9 acres could be cleared before there was an obligation to bring a plan to the town, and no mechanism to bring it to the Commission other than the discretionary referral. He asked the Selectmen if there was some mechanism for the town to review the project, other than the requirement for a special permit to clear more than 1/3 of a lot.

Todd Rebello confirmed that Town Counsel had determined that the Zoning Official may not take action unless 1/3 of a lot is cleared.

Mark London suggested that DRI designation could institute review before 90 acres have been cut.

Jane A. Greene asked Brian Lafferty whether he thought Corey would sit down to discuss this. She asked what kind of livestock was planned.

Jack Wuerth said that listening to this conversation makes it clear that there are many reasons why a plan is necessary and why the proposal needs to be reviewed. That won't happen unless the Commission decides to make it a DRI.

Kerry Scott said that if the town ability to act before 90 acres have been cut is limited, she wondered at what point the Commission could intervene and would there be assurance that the 90 acres would not be cut.

Ron Mechur had been a representative of Mr. Kupersmith. He noted that there had been a mediation session several years ago. He also has read in the papers of an effort to purchase the property for \$26 million, but that one of the issues was that the Selectmen supposedly had too much involvement in the project. He noted that Todd Rebello has said he would like to get everyone involved but that the Selectmen should not take the lead. Maybe the purchase effort could be reactivated, without the Selectmen as key participants. He is president of the Mediation Board on the Vineyard, and wondered whether the parties are "ripe" for mediation.

Brian Lafferty responded to Mr. Woodruff's suggestion that the Selectmen take the initiative in trying to resolve this.

- He said that a year ago, the Selectmen came with a proposal that was signed by unanimous endorsement of every town board, and asked the Commission to support the initiative that they had taken, and the Commission didn't pay any attention to them.
- In response to Doug Sederholm, he said that Mr. Kupersmith can do what he wants on his property, even though it is larger than other people's yards.
- Regarding the need for a plan, he noted that the Commission only has the newspaper reports and the letters as discussed.
- He asked for a show of hands of people who have viewed the property in person, and stated that they were all trespassing. **Richard Toole** responded that CKA has made it easy to view the property without trespassing.
- **Brian Lafferty** reiterated that the Commission will never have a plan, and has nothing to review.
- He said that Chapter 831 grants certain powers to the Commission, only those powers already vested by statute in a town, with no additional power. The agricultural exemption is a statewide policy that takes jurisdiction away from the towns. There is no way the Commission has jurisdiction over agricultural use on a property over 4 acres, because it is pre-empted by state law.
- In response to Jane A. Greene's question, he said, "I would suggest that it would be probably be the most noxious sort of livestock, as if you were questioning that".
- In response to her question about sitting down to the table, he responded that it would depend on the circumstances.

Jane A. Greene asked what is the most noxious animal.

Brian Lafferty responded "probably a piggery, from what I understand".

Christina Brown closed the hearing at 9:45.

The meeting was in recess from 9:45 to 9:57.

7. SOUTHERN WOODLANDS CLEARING OF TREES AND ALTERATION OF USE – DELIBERATIONS AND DECISION ON DISCRETIONARY REFERRAL (DRI 555-1)

Commissioners present: J. Best, C. Brown, L. DeWitt, J. Greene, K. Newman, R. Schwartz, D. Sederholm, L. Sibley, R. Toole, A. Woodruff.

Doug Sederholm moved and it was duly seconded that, based on the evidence presented in this public hearing, the evidence in the written record, including but not limited to Mr. Lafferty's November 11, 2003 letter to the Massachusetts Division of Fisheries and Wildlife, and the letter from Mr. French, dated November 20, 2003, and Mr. Lafferty's statement tonight of the intent of the land owner with regard to the planned use, the tree-cutting and alteration of use proposed constitute a development as that term is defined by Chapter 831 section 6, in that these activities would constitute a material change in the appearance or use of the land and also these activities would constitute a change in the intensity of the use of the land, and that we accept the referral from the Oak Bluffs Board of Selectmen and the referral by the Dukes County Commissioners because the development as described by Mr. Lafferty and as identified in the record would have impacts within other municipalities, particularly Tisbury, on the values protected in section one of the Act, and the interests enumerated in section 15 of the Act.

Doug Sederholm said that it seems clear that people are caught up as to whether there is a plan and without one, how the Commission can judge whether it is a DRI. He recalled that Brian Lafferty had made an eloquent defense of private property rights, but **Doug Sederholm** noted that, if your back yard is 270 acres and the proposal is to remove all the trees, that would impact watersheds and habitats that have been identified as priority habitat by the state, that would destroy the habitats for certain wildlife, and that would impact the water quality in Lagoon Pond and Sengekontacket Pond, then it is not simply a question of private property rights; it would have huge impacts on other towns and on the Island as a whole. Because of that, the statute that created the Commission requires the Commission to determine whether it is a DRI and, if so, to provide some oversight to the use of that land. He believes that the Commission should determine that the project is a DRI, and provide that oversight. He is not suggesting that Corey Kupersmith doesn't have the right to use his land, but that he has to do it in a way that doesn't damage the values that the Commission was created to protect.

John Best asked whether MVC Counsel or Executive Director has any suggestions about how to hear this.

Linda Sibley suggested that, if it is determined to be a DRI, then the applicant has a choice of bringing a plan, as with any other type of referral. If no plan is produced, that is a question for the attorneys. **Mark London** reiterated that there are two issues; first, determining whether it is a DRI; then, if it is, proceeding with an application and review of the proposal itself.

Jane A. Greene said the Commission doesn't have to vote right away, and should think about it.

Andrew Woodruff said that the Commission should vote; there is enough information.

Richard Toole also spoke in favor of voting at once; that it is clearly a DRI.

Jane A. Greene wondered if a DRI determination would set a precedent in dealing with using a property for personal use.

Linda Sibley recalled that there had been a previous discretionary referral of a single-family residence.

Andrew Woodruff noted the timber harvesting of the pitch pine that is considered a priority species during previous reviews. He added that the pitch pine cutting was clearly provocation and that Mr. Lafferty said during the hearing that his actions are a provocation. He doesn't see how the Commission could choose to not act to defend the violations of the DCPC and the Commission's responsibilities to protect the resources of the Island. His votes against the golf course were not against the owner's use of the property.

Katherine Newman asked whether the "once a DRI always a DRI" designation requires that a plan be produced. She wondered whether there should be a plan, so that everyone is clear about moving ahead.

Christina Brown asked Doug Sederholm to clarify to what the motion referred, if it included the cutting that has already taken place.

Doug Sederholm said that the Commission cannot ignore the cutting that has taken place so far, because it is the most powerful evidence so far with regard to the landowner's intent. There have been 2 cuttings so far, 20,000 board feet of pitch pine and 6 acres clear-cut adjacent to Featherstone where Mr. Kupersmith will put a piggery. Those actions support the statements made during the hearing, that the owner proposes to remove all the trees and to use the property for his personal agricultural and recreational use. However, the motion only refers to future actions. Based on the evidence, it appears that Mr. Kupersmith's intent is to continue clear cutting and remove all the trees on the land.

Doug Sederholm moved, and it was duly seconded, to amend the motion to include that anticipated tree cutting and proposed alteration of use, constitute a development of regional impact. Voice vote to accept the amendment to the motion. In favor: 10. Opposed: 0. Abstentions: 0.

John Best asked why limit the motion to future actions.

Linda Sibley said that she could accept that what has been done was done for personal use.

Brian Lafferty made a point of order, saying that the Commission did not have a referral on future actions.

Roll call vote on the motion to accept the discretionary DRI referral by the Oak Bluffs Selectmen and the Dukes County Commission. In favor: J. Best, C. Brown, L. DeWitt, K. Newman, R. Schwartz, D. Sederholm, L. Sibley, R. Toole, and A. Woodruff. Opposed: none. Abstention: J. Greene. The motion carried.

Doug Sederholm moved, and it was duly seconded, that the Commission find that the proposed tree-cutting and proposed alteration of use, on Mr. Kupersmith's property (which has been referred by the Oak Bluffs Board of Selectmen and by the Dukes County Commissioners) would constitute a development of regional impact because it qualifies under section 3.102a of the standards and criteria of the Martha's Vineyard Commission, in that it is a proposed development on a property which has been in part or in whole the subject of a previous DRI application which was denied, also known as "once a DRI, always a DRI".

Christina Brown said that if the land was the subject of a previous DRI, it is only a DRI if it has regional impact.

Roll call vote: In favor: J. Best, C. Brown, L. DeWitt, J. Greene, K. Newman, R. Schwartz, D. Sederholm, L. Sibley, R. Toole, A. Woodruff. Opposed: none. Abstentions: none. The motion carried.

8. ESTRELLA YOGA STUDIO (DRI No 506-1) – WRITTEN DECISION

Commissioners present: J. Best, C. Brown, L. DeWitt, J. Greene, K. Newman, D. Sederholm, L. Sibley, R. Toole, A. Woodruff. (R. Schwartz was ineligible to vote on this item)

Christina Brown moved, and it was duly seconded, to approve the draft written decision for Estrella Yoga Studio (DRI no. 506-1) as presented.

Roll call vote. In favor: J. Best, C. Brown, L. DeWitt, J. Greene, K. Newman, D. Sederholm, L. Sibley, R. Toole, A. Woodruff. Opposed: none. Abstentions: none. The motion to approve the written decision carried.

9. ADOPTION OF MINUTES

Deferred.

10. OTHER BUSINESS – LOOKING AT THE COMMISSION

Mark London distributed copies of a report on the status of the short-term actions adopted by the Commission in April 2003 for adoption by the fall of the year. These were based on his report called "Looking at the Commission".

- All the short-term actions have been completed or are well underway, with the exception of the renovations to the building.
- Many documents are in an advance state of preparation with a view to printing early in the new year.
- In addition, much work has been done on the DRI process including activities that had been identified as medium-term actions.
- Progress has also been made on the medium-term action of getting a web site running. It should be ready in the spring.
- The Commission should discuss in early 2004 the medium-term actions it wishes to undertake.

11. OTHER BUSINESS – CHRISTMAS HOLIDAY

Jane A. Greene moved and it was duly seconded, that the staff should have the day after Christmas off, because the staff has been working very hard, and that the office should be closed December 26. Voice vote to close the office on December 26: In favor: 10. Opposed: 0. Abstentions: 0. The motion carried.

The Meeting was adjourned at 10:15 p.m.

Chairman

Date

Clerk-Treasurer

Date